

The 28th February, 1995

No. 14/13/87-6 Lab./236.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respecting the dispute between the workman and the management of M/s Haryana Television Ltd., Plot No. 12, Sector 12, Faridabad *versus* Avtar Singh.

IN THE COURT OF SH. U. B. KHANDUA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 177/88

Between

M/S HARYANA TELEVISION LTD., PLOT NO. 12, SECTOR 12, FARIDABAD

.. Management

Versus

SH. AVTAR SINGH, C/O SH. ASHOK KUMAR SHARMA, ADVOCATE, 7-D, FARIDABAD .. Workman

Present :

None, for the workman.

Sh. A. S. Chadha, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endorsement No. 2925—30, dated 19th January, 1988 :—

Whether the termination of services of Sh. Avtar Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the management on 20th May, 1976 as helper but later on he was designated as peon. His last drawn salary was Rs. 560/- p.m. On 22nd May, 1987 he was issued chargesheet containing false and fabricated charges. The enquiry got conducted by the management was against the principles natural justice as he was not afforded full opportunity to defend himself. He was not allowed the assistance of a representative of his choice. The enquiry officer held the enquiry *ex parte* and the management dismissed him from service on the basis of that *ex parte* report. Again on 8th June, 1987 the management issued another letter containing charges full of lies. No enquiry was held with regard to those charges. The workman was not given any opportunity. The management in a very arbitrary manner held him guilty and passed order dated 13th July, 1987 for striking of his name from the musted rolls of the company. The punishment awarded to him is also this proportionate to the charges levelled against him. Consequently, he is entitled to be reinstated into service with continuity in services and full back wages.

3. The management submitted written statement dated 6th April, 1988 stating therein that the workman was issued chargesheet for having committed gross of misconduct. The explanation given by him was not found to contain any merit. In order to give yet another opportunity to the workman, domestic enquiry was ordered. The enquiry officer conducted the enquiry keeping in view the principles of natural justice and found the workman guilty of the charges levelled against him. Thereafter show cause notice was issued to the workman and it was duly received by him. Consequently, the workman was dismissed from service *vide* order dated 22nd June, 1987. Besides another order striking of the name of the workman was issued as he had remained absent from duty in illegal and unauthorised manner.

4. The workman submitted rejoinder dated 1st August, 1988 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed :—

(1) Whether the termination of services of Sh. Avtar Singh is legal and justified ? If not, to what relief, is he entitled to ? (As per terms of reference).

6. The management has led evidence. The workman failed to adduce evidence despite several opportunities.

7. On 16th December, 1993 Sh. B. L. Gupta, authorised representative of the workman pleaded no further instructions to appear on behalf of the workman and as such it was ordered that he may be proceeded against *ex parte*.

8. I have heard the authorised representative of the workman and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

9. The perusal of the evidence on record shows that the workman was issued chargesheet dated 8th June, 1987 levelling six charges against him. The workman denied all the allegations levelled against him and made counter allegation that the charges have been levelled against him since he had given statement in the court on complaint filed by Mrs. V. L. Kapoor, Dy. Marketing Officer against the Managing Director. The management thus, appointed an enquiry officer to enquire into the charges —vide dated 15th June, 1987. The enquiry officer fixed the enquiry on 18th June, 1987 but the workman did not appear. The management informed the enquiry officer that the workman had been absent from duty without permission since 11th June 1987, A notice about the enquiry was thus, got pasted at his residence as it was found locked. Another opportunity was given to the workman to appear before him on 20th June, 1987 but the workman did not appear despite the fact that notice was again got pasted at his residence. The enquiry officer then recorded the statement of the witnesses of the management *ex parte*. Once again he issued a letter to the workman to appear before him on 24th June, 1987 and got a notice to this fact vested at his residence. The workman did not appear and so the enquiry officer submitted his enquiry report on the basis of the evidence adduced before him by the management. Thereafter the workman was dismissed from service without prejudice to this order. An order was passed for striking of the name of the workman from the rolls of the company for his continued absent w.o.f. 11th June, 1987 to 13th July, 1987.

10. It is clear from the position mentioned above that the management passed the impugned order of dismissal of the workman from service after finding him guilty of the charge levelled against him. It is also established that the workman was granted full opportunity to lead evidence in his defence. The action of the management however, on passing order striking of name of the workman from the rolls of the company was not required. It is also not legal and valid as the workman was not granted any opportunity to explain as to why he had been absent from duty.

11. For the reasons recorded above, it is held that the order passed by the management regarding dismissal of the workman from service is legal and justified. Consequently, he is not entitled to any relief. The award is passed accordingly.

The 23rd January, 1995.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 176, dated 31st January, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./254. — In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Rubber Vikas Udyog (P) Ltd., Plot No. 60, Sector-25, Faridabad *versus* Basant Chauhan :—

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-II, FARIDABAD

App. No. 88/93
between

THE WORKMAN NAMELY SH. BASANT CHAUHAN C/O SH. S. C. SHRIVASTVA, 41, PURANI CHUNGI, FARIDABAD OLD .. *Applicant.*

and

THE MANAGEMENT OF M/S RUBBER VIKAS UDYOG (P) LTD. PLOT No. 60, SECTOR-25,
FARIDABAD .. *Respondent.*

Present :

Sh. Kalewar Mishra, for the workman.

Sh. K. P. Aggarwal, for the management.

AWARD

Basant Chauhan, an employee of the respondent submitted application dated 22nd January, 1990 under Section 33-A of the Industrial Disputes Act (for short called 'the Act'), praying therein for the grant of appropriate relief.

2. Briefly stated the case of the applicant is that he was permanent employee of the respondent and was directly concerned with the Industrial Dispute referred to the present Tribunal by the Government and registered as reference No. 527/87. The applicant was an active member of the union and so he had been pursuing several causes of action/disputes pending before various courts and authorities against the respondent. In order of pressurise the applicant for coming to terms the respondent started harrassing him. The applicant had been working in the store department for the last more than 4 years without any complaint by the respondent prompted with *mala fide* intention transferred him to chemical department as helper and allotted the job which was being done by him to an outside agency. He was not provided with any job in the chemical department and it was wrongly recorded in his attendance card that he had refused to work. His transfer, reduction in rank, pay and shifting of work to outside agency effected during the pendency of dispute No. 527/87 is in contravention of Section 33 of the Act. Hence the application.

3. The respondent submitted written statement stating therein that the application is not maintainable as the respondent has not violated the provisions of Section 33 of the Act. The applicant is not a protected workman as he had never been the office bearer of the union. The applicant had been working in the store as helper. Five helpers including the applicant had become surplus and instead of effecting retrenchment the respondent transferred them to various departments inside the factory to work as helpers as per provision of the Certified Standing Orders. The action of the respondent of transferring the applicant, is legal and justified and as such is application be dismissed.

4. The applicant submitted rejoinder re-asserting the previous averments and denying the averments of the respondent.

5. On the pleadings of the parties, the following issue was framed :—

(1) Whether there has been alteration in the service conditions of the applicant during the pendency of Reference No. 527/87?

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the file carefully. My findings on the aforesaid issues are as follows.

Issue No. 1 :

8. The applicant examined himself on oath and deposed the facts mentioned in his application referred to above. He also placed on file copies of challans Ex.W-1 to Ex.W-4 to shows that the management had started getting work done from outside from Micky Rubber Industries. He, however, admitted in his cross-examination that he was to get the same amount of pay as before after his transfer. He also addmitted that he had no proof of the fact that he has been an active member of the union.

9. On the other hand, two witnesses have been examined by the respondent. MW-1 Satish Ahuja deposed that he was appointed as Enquiry Officer through letter Ex.M-1 to enquire into the charges against the workman, and three other workmen and he had conducted the enquiry proceedings as contained in Ex. M-2 and then submitted his report Ex. M-78. MW-2 Ravi Kiran Jain, Managing Director of the respondent deposed that the applicant was transferred,—*vide* order dated 30th December, 1989. Ex. M-14 from Store Department to Chemical Department as per provision in the Certified Standing Orders of the company Ex. M-15. The applicant had made protest and had not joined duty in the chemical department and as such the disciplinary proceedings were initiated against him and then finally discharged from service.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the applicant that it is admitted by the respondent that reference No. 527/87 relating to the general demand was pending before the Tribunal. The respondent has not led any evidence to prove that the applicant was transferred from store department to chemical department due to shortage of work in the store department or due to go slow policy adopted by the workmen. It is proved from the challan Ex. W-1 to Ex. W-4 placed on file by the applicant that the respondent had started getting the work done from a contractor Micky Rubber Industries. Besides this the respondent should have laid off the staff posted in the store department even if there was shortage of work. There was absolutely no justification to transfer the applicant and three others from the store department to other departments on the ground of alleged shortage of work. The impugned action of the respondent of transferring the present applicant from store department to chemical department is thus

colourable exercise of the powers vested in the respondent. It amounts to unfair labour practice falling under clause 5(b) and clauses 6 & 7 of Fifth Schedule appended with the Act. Thus, the impugned order be quashed.

11. To support the aforesaid contention the authorised representative of the applicant has placed reliance on the decision in the cases reported as Bhashkar Nair *versus* Management Premier Tyres and another 1975 LLJ 101 in which it was held that the petitioner/workman was certainly interested in the earlier dispute as it was a collective dispute on behalf of all the workmen in general. Reliance has also been placed on the decision in the cases between Standard Vacuum Oil Company Ltd., Calcutta and their employees 1954 355 in which it was held that the liability to be transferred from one place to another by the employer is an implied condition of service.

12. On the other hand, it has been urged on behalf of the respondent that the applicant was transferred from store department to chemical department in exercise of the powers vested in the respondent in clause 26 of the Certified Standing Orders. It is not a change in service condition as per fourth Schedule of the Act. Thus, the provision of Section 33 of the Act has not been violated which is a very foundation of the complaint under Section 33-A of the Act. Consequently, the application is not maintainable. To support this plea, reliance has been placed on certain decided cases to which the reference shall be made hereafter.

13. In the cases of Mahendra Singh Dhantwal *versus* Hindustan Motors Ltd. and other 1977 SCC (L & S) 20 the Hon'ble apex court of the land held that the foundation of the jurisdiction of the Tribunal to entertain a complaint under Section 33-A is the contravention of Section 33 of the Act. The Hon'ble Supreme Court in Bhavnagar Municipality *versus* Alibhai, Karimbhai 1977 (II) LLN laid down in order to attract Section 33 (1) (a) of the Industrial Disputes Act, 1947 the following features must be present :—

- (1) There is a proceeding in respect of an Industrial Disputes pending before the Tribunal.
- (2) Conditions of service of the workman applicable immediately before the commencement of the Tribunal proceedings are altered.
- (3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial disputes.
- (4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.
- (5) The alteration of the conditions of service is to the prejudice of the workman.

If any of these conditions is wanting in a given case or is not established, complaint under section 33-A of the Act shall not be tenable.

14. Examined in the light of the aforesaid decision, it is observed that in the instant case only feature No. 1 & 4 are present. The other three features are not present for the reasons hereafter discussed.

15. It is not disputed that proceedings in respect of an industrial dispute Reference No. 527 of 1987 were pending.

16. Clause 26 of the Certified Standing Orders of the respondent company Ex-M15 empowers the management to transfer the workman from one department to another department without affecting the status and pay of the transferee workman. It is clearly mentioned in the impugned transfer order dated 30th December, 1989 Ex. M-11 that the applicant was being transferred from Store Department to Chemical Department under the provision of clause 26 of the Certified Standing Order of the company. The applicant admitted in his cross-examination that he was to get the same pay as before after his transfer. There is no dispute that the workman was working as Helper in the store department and was transferred in that very capacity to the Chemical Department. The applicant has also not led any evidence to prove that he was an active member of the union. The applicant admitted that he was not a office bearer of the union. Thus, the applicant could not be taken as a protected workman under the provisions of Section 33 (3 and 4) of the Act. There is no basis to hold that the respondent passed the impugned order in colourable exercise of the powers as urged by the authorised representative of the applicant. It is thus, held that the conditions of service of the applicant applicable immediately before the commencement of tribunal proceedings were not altered by the impugned order of transfer.

17. The perusal of the reference No. 527/87 Ex. W-9 show that the union served demand notice dated 12th February, 1987 containing eight demands but the Government referred three demands for adjudication, namely :—

- (1) Whether each workman of the company is entitled to two pairs of uniforms? If so, to what details?

(2) Whether each workman of the company is entitled to two pairs of leather shoes? If so, to what details?

(3) Whether each workmen of the company is entitled to claim a sum of Rs. 20 P.M. as Washing allowance? If so, to what details?

It is rightly pointed out by the authorised representative of the respondent that transfer of the present workman is not connected with the aforesaid demands. That being so, it is held that the features No. 3 mentioned above is missing in the present case.

18. So far as the feature No. 4 is concerned, it is observed that the present workman is concerned in the pending industrial dispute as per law laid down in the case between Bhaskaran Nair *versus* Management Premier Tyres Ltd and another 1975 LLJ 101 (Supra)

19. The applicant has not led any evidence to prove as to how the impugned transfer order is to his prejudice. It is clear from the position discussed above that the status and pay of the applicant was not effected by the impugned order of transfer. Thus, it can not be taken that it was passed to victimise the workmen. That being so, the law laid down in the case between Standard Vacuum Oil Co. Ltd., Calcutta and their employees 1955 LLJ 355 referred to above does not assist the case of the applicant. In result, it found that feature No. 5 is not present in the instant case.

20. For the reasons recorded above, it is held that the application is devoid of merit and so the same is dismissed. The award if passed accordingly.

U. B. KHANDUJA,

The 10th January, 1995

Presiding Officer,
Industrial Tribunal-II, Faridabad.

Endorsement No. 135, dated the 24th January, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Industrial Tribunal-II, Faridabad.

The 7th March, 1995.

No. 14/13/82-Lab./ 256.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Estate Officer, Haryana Urban Development Authority, Sector-12, Faridabad, *versus* Jagdev Singh.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 177 of 92

IN THE MATTER OF INDUSTRIAL DISPUTE

BETWEEN

SHRI JAGDEV SINGH, S/O SHRI BUDHI, C/O SHRI V. B. SHARMA, H. NO. 872,
SECTOR-15, FARIDABAD .. *Workman.*

versus

ESTATE OFFICER, HARYANA URBAN DEVELOPMENT AUTHORITY, SECTOR-12,
FARIDABAD .. *Respondent.*

Present :

Shri D. S. Tiwaria, Authorised Representative for the workman.

Shri M. Kaushik, Authorised Representative for the management.

AWARD

Under the provision of section 10 (1) (C) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. ID/FD/87-92/39118-123 dated 19th March, 1992 referred the following dispute between the parties above mentioned for adjudication:—

Whether termination of services of Shri Jagdev Singh is legal & justified. If not, to what relief he is entitled?

2. The case of the workman is that he was initially appointed as Chowkidar in HUDA on 21st February, 1991. Since his work and conduct was satisfactory he was promoted as Bill Distributor with effect from 1st November, 1991 and his last drawn wages were Rs. 1078 per month. His allegation is that his services were terminated with effect from 1st April, 1992 without assigning any reason and without issuing charge-sheet or holding any domestic enquiry although he had completed more than 240 days of service. So, taking his termination is illegal unjustified and opposed to the principles of natural justice, the workman has claimed his reinstatement with continuity of service and full back wages.

3. Stand taken by the management in its written statement is that the workman was engaged for the first time by the Estate Officer and after it he was appointed on daily wages by the Sub-Divisional Engineer in Sub Division No. 3. According to the Management, the workman had worked as Bill Distributor for 151 days from 1st November, 1991 to 31st February, 1992 and was in receipt of wages at the rate of Rs. 34.74 per day. Further stand of the Management is that the workman had left the job himself and his services were never terminated. He had neither made any representation nor had reported for duty and therefore he is not entitled to any relief. Other objections taken are that HUDA does not come under the definition of Industry and that the workman had not completed 240 days of service in a calendar year and for the matter his petition should not be entertained.

4. In the rejoinder, pleas taken in the claim petition have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issues were framed:—

- (1) As per reference.
- (2) Whether the parties are not covered under the definition of Industrial Disputes Act, 1947?
- (3) Whether the court has no jurisdiction?

6. I have heard authorised representative for the parties and perused facts brought on record. My findings on each of the Issues with reasons therefore are as under:—

Issue No. 1.

7. R. K. Singh junior Engineer examined as MW-1 stated that the workman was appointed as Bill Distributor on 1st November, 1991 and had worked for 151 days i.e. upto 31st March, 1992. The witness also stated that the services of the workman were not terminated but he had himself left the job and never returned to duty after 31st March, 1992. The witness denied that the workman was promoted as Bill Distributor from Chowkidar. He, however, admitted that letters Ex. W-1 to Ex.-W-7 showing engagement of the workman by Estate Officer HUDA on monthly basis as per rates fixed by the Deputy Commissioner, Faridabad and charging the expenditure to contingency were issued in favour of the workman giving him service as chowkidar for the period from 20th February, 1991 to 31st August, 1991. The witness also admitted the issuance of certificate Ex. W-8 to show that the workman had worked as Bill Distributor in Sub Division No. 3 on daily wages from November, 1991 to March, 1992. The witness denied that the workman had rendered service for more than 240 days.

8. Workman examined as WW-1 stated that he was appointed as Chowkidar with effect from 21st February 1991, and was given month to month extension upto March, 1992 by means of letters Ex.-W-1 to Ex. W-8. He further stated that his services were terminated while persons junior to him were retained in service. The workman admitted that he had worked as Bill Distributor for five months only and had not completed 240 days on the job of Bill Distributor. The workman also admitted that the duties of Bill Distributor were different from the duties of Chowkidar.

9. The evidence led by the parties shows it that the workman had worked as Chowkidar from 21st February, 1991 to 31st August, 1991 and as Bill Distributor from November, 1991 to March, 1992. Neither any letter of promotion from Chowkidar to Bill Distributor as alleged by him has been placed on record, nor any explanation for gap in his service from 1st September, 1991 to 30th October, 1991 given,

On this account the service rendered from by him in the year 1991 cannot be clubbed with his service rendered in the year 1992. This apart, he is shown to have worked as Bill Distributor only for five months i. e. for 151 days. So, it is not proved that he had worked for 240 days on one post and in one office. Even otherwise also, it is proved from the evidence led by the Management which looks to be quite cogent in the circumstances obtaining in the case that the services of the workman had not been terminated. Rather, he had himself abandoned the job. Therefore, on this account and also that the workman had not completed 240 days of service on one post and at one place he is not entitled to any relief. This issue is decided accordingly.

Issue Nos. 2 and 3.

10. These issues were neither pressed nor any arguments addressed thereon. Accordingly, both these issues are decided against the Management and in favour of the workman.

11. In view of my findings on issue No. 1 it is held that the management had not terminated the services of the workman but the latter had himself abandoned the job. He is thus not entitled to any relief. An award is passed accordingly.

N. L. PRUTHI,

Dated 20th January, 1995.

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 307 dated, 24th January, 1995.

A copy with, three spare copies, is forwarded to the Commissioner and Secretary to Government of Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

The 7th March, 1995.

No. 14/13/87-6Lab./258 In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Thomson Press India Limited *versus* Vinay Kumar.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD.

Reference No. 84 of 1987.

IN THE MATTER OF INDUSTRIAL DISPUTE.

Between

SHRI VINAY KUMAR, SON OF SHRI KALU RAM C/O 29, SHAHID CHOWK,
FARIDABAD. .. *Workman*

and

M/S THOMSON PRESS INDIA LIMITED, MATHURA ROAD, FARIDABAD. .. *Respondent*

Present :—

Shri B. L. GUPTA, Authorised representative for the workman.

Shri M. P. Gupta, Authorised representative for the management.

AWARD

Under the provisions of section 10 (1) (d) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. OU/FD 35420-25, dated 8th September, 1987 referred the following dispute between the parties above mentioned for adjudication:—

Whether termination of services of Shri Vinay Kumar is legal and justified? If not, to what relief he is entitled?

2. The case of the workman is that he was employed as Helper in July, 1984 and his last drawn wages were Rs. 603 per month. His work and conduct was satisfactory but the management stopped him at the gate on 28th May, 1987 on account of annoyance caused because of his refusal to sign some blank papers in order to bring break in his service. He alleged to have made a representation on which he was assured that he would be reinstated. He was neither given any notice nor compensation as payable under the Industrial Disputes Act. On account of his alleged illegal termination the workman has claimed his reinstatement with continuity of service and full back wages.

3. The management has in the written statement taken a stand that the workman was employed as a Helper with effect from 29th August, 1986 on purely temporary basis for a period of three months. This period was further extended for a period of three months each time. Then on 28th May, 1987 the workman submitted his resignation in his own handwriting wherein he stated that he wanted to set up a Timber shop in his village and was thus unable to continue with the employment and his resignation be accepted and he relieved. His resignation was accepted on the same day and acceptance latter dated 28th May, 1987 was issued to him. His full and final dues which amounted to Rs. 807.30 after making statutory deductions were paid to him. The same was duly received and accepted by the workman. So, according to Management the dispute raised by the workman is an after thought and there being no termination by the Management, the reference is bad in law and liable to be rejected.

4. In the rejoinder pleas taken in the claim statement have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties following issues were framed on 14th July, 1988:—

- (1) Whether petitioner workman resigned and received his full and final dues as alleged? OPM
- (2) As per reference ? OPM

6. I have the authorised representative for the parties and perused the fact on record. My findings on each of the issues with reasons therefore are as under:—

Issue No. 1.

7. In his examination as MW-1 Shri V K Kwattra, Assistant Personnel Manager stated that on the basis of application dated 28th August, 1986 the workman was given appointment letter dated 29th August, 1986 (Ex. M1). Duration of employment was extended on three months basis,—*vide* extension letter Ex. M-4 of 1st December, 1986 Ex. M-5 of 17th March, 1987. The witness stated further that on 28th May, 1987 the workman submitted resignation Ex. M-6 in his own handwriting and the same was accepted on the same day and letter of acceptance was issued Ex. M7. According to this witness legal dues as mentioned in Ex.8 (receipt of final settlement and release) were paid to the workman in his presence. The witness denied that undated resignation letter was produced at the time of his appointment. Workman Vinay Kumar examined as WW-1 stated that he was appointed in Thomson Press in the year 1989 and an undated resignation i. e. Ex. M6 was obtained from him in July, 1984. The workman denied that he had resigned voluntarily or that he had received full and final payment. The workman has produced Krishan Gopal as WW2, Head Clerk PFA Office to prove that the workman had initially been inducted in service on 11th July, 1984. The statement made by this witness and the documents placed on record by him to show the date of initial appointment do not require any discussion because of admission made by MW-1 V. K. Kwattra that the workman was appointed as Helper in July, 1984.

8. The workman has admitted his signatures on his application dated 28th August, 1986 for the post of Helper Ex. M1 letter of appointment dated 29th August, 1986. Form of Employment dated 29th August, 1986, Ex. M3, letter of resignation dated 28th May, 1987 Ex. M6 letter of acceptance of resignation Ex. M7 and receipt of final settlement and release Ex. M8. The workman has not raised any dispute with regards to above documents except Ex. M6 which is letter of resignation. The stand taken by the workman does not appear to be correct. His three version have come on record. In the demand notice it is mentioned that the management used to obtain his resignation on blank papers and keep the same with it. There is no reference at all in the demand notice of the voluntary resignation. In the statement of claim there is also no mention of resignation letter but what has been stated in that prior to 28th May, 1987

the management had asked him to sign some blank papers. The third version is contained in the statement of the workman examined as WW-1. Therein he has stated that undated resignation letter was produced from him in July, 1984. The ink used in whole of the writing including date is in the same ink and with same pen. In the replication the workman did not deny execution of resignation letter but took a stand that it was a voluntary one and obtained under undue influence. In his examination as WW-1 the workman did not say a word with regards to undue influence. He has also not led any evidence to prove this assertion of his. So, in the absence of any evidence and working the particulars of undue influence the plea of undue influence is untenable. There is no corroboration in his stand of involuntary resignation. Therefore, an irresistible conclusion drawn from the discussion made above is that the workman had not terminated the services of the workman but the workman had voluntarily tendered resignation from the service and had also received full and final payment. This issue is decided accordingly.

Issue No. 2:

9. In view of my findings in issue no. 1 that the services of the workman were not terminated by the management but he had resigned the job and had also collected his full and final payment. he is not entitled to any relief.

An award is passed accordingly.

N. L. PRUTHI,

The 25th January, 1995.

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 310 dated, 25th January, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana Labour and Employment Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

The 7th March, 1995

No. 14/13/87-6Lab./260.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Chief Medical Officer, B. K. Hospital, Faridabad *versus* Mohamad Aslam.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 155/1991

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI MOHAMAD ASLAM, S/O SHRI MOHD. UMAR VILLAGE FATEHPUR TAGA, TEHSIL & DISTRICT FARIDABAD .. Workman

and

CHIEF MEDICAL OFFICER, B. K. HOSPITAL, FARIDABAD .. Management.

Present :

Mrs. Savita Bhandari, Authorised Representative, for workman.

Sh. N. M. Sharma, Authorised Representative, for Management.

AWARD

Under the provisions of section 10(1)(c) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. OV/FD/82-91/8552-57, dated 28th May, 1991, referred the following dispute between the parties above mentioned for adjudication :—

“Whether the termination of services of Shri Mohamad Aslam is legal and justified. If not, to what relief he is entitled?”

2. The case of the workman is that he is a qualified Electrician and was employed as an Electrician in B. K. Hospital, Faridabad with effect from 3rd January, 1983 on payment of monthly wages Rs. 390. At the time of his appointment, he was given to understand that he was being appointed on regular and permanent basis as there was no other Electrician working in the Hospital. His work had been quite satisfactory but to his surprise he got a hint from his Supervisor that his services could be terminated at any time at the whims of his superiors. Further case of the workmen is that he had put in continuous service for a period of more than six years, but the Management terminated his services on 29th March, 1990 in quite an illegal and unjustified manner. This termination of his services was in total disregard of the orders dated 15th January, 1990 of the Hon'ble High Court of Punjab & Haryana in writ petition No. 490 of 1990 whereby the workman was advised to make a representation and the Department was directed to pass appropriate orders thereon within six months with a further direction to maintain status quo. According to the workman his termination is in contempt of the orders of the Hon'ble High Court. The representation of the workman was rejected by the Management. After receipt of reply dated 20th February, 1990 from the Management, the workman again approached Hon'ble High Court.—*vide* Civil writ Petition No. 1414 of 1990. Therein, the workman was advised to file a case under the provisions of Industrial Disputes Act. Other contention made by the workman is that while terminating his services, he was neither paid service compensation nor notice pay which is in violation of the provisions contained in Section 25-F of the Act. It has also been contended by the workman that he is continuing to be unemployed while the post of Electrician is still lying vacant. It is on these facts that the workman has claimed reinstatement with continuity of services and full back wages as also his earned wages for one month.

2. The case of the Management is that the workman was engaged purely on daily wage basis at the rates prescribed by the Deputy Commissioner, Faridabad from time to time out of contingent funds. Further more, the workman was engaged to cope with emergency as and when the same arose within hospital premises simply on plain paper because no regular recruitment could be made because of ban imposed by the State Government in its circular dated 24th November, 1983 issued by the Director of Health Services. The Management contends to have made compliance of the orders of the Hon'ble High Court by giving an opportunity to the workman to fulfil the conditions that his services could be made regular. That when the workman did not fulfil the condition of eligibility and did not give reply for one months, his services were terminated.—*vide* letter dated 29th March, 1990. An objection has also been taken that Health Department is not an Industry and for that matter provisions of Industrial Disputes Act are not applicable in this case.

3. In the rejoinder, pleas taken in the claim statement have been reiterated while those in the written statement controverted.

4. On the pleadings of the parties, following issues were framed for adjudication :—

- (1) As per reference.
- (2) Whether the workman is not covered under the definition of the workman. If so, its effect? OPM
- (3) Whether the Management is not covered under the Industrial Disputes Act, and if so, its effect?

5. I have heard Authorised Representative for the parties and perused facts on record. My finding on each of the issues with reasons therefor are as under :—

Issue No. 1 :

6. K. L. Galhotra, District Medical Officer, Faridabad examined as MW-1 stated that the workman employed as Electrician in B. K. Hospital since 3rd January, 1983 was being paid wages at the rate of Rs. 13 per day i.e. at D.C. rates out of contingent funds. The workman gave application Ex. M-1 for employment on the basis of which letter of appointment Ex. M-2 was issued. According to this witness, the workman did not possess I.T.I. Diploma nor his name was sponsored by the Employment Exchange. The witness also stated that the workman did not get his name registered with the Employment Exchange and also

did not give reply to letter dated 20th February, 1990 (Mark A) wherein he was directed to intimate whether he was Matriculate and possessed I.T.I. Diploma and should get his name registered with Employment Exchange. This witness admitted that although the workman had worked continuously from the year 1983 to 1990 yet he was given break in his service after every three months. He also admitted that at the time of termination of services of the workman, he was neither given notice pay nor any compensation. The witness also stated that the post of an Electrician is not a permanent one nor there is necessity of such a post on permanent basis. Rajbir Singh, Head Clerk, B.K. Hospital examined as MW-2 also stated that the workman had worked from 1983 to 1990 as contingent paid at D.C. Rates. The witness also stated that on the basis of letter which he possessed the performance of the workman was satisfactory. This witness also stated that the post of Electrician was still lying vacant.

7. Workman examined as WW-1 reasserted all the facts as are contained in claim statement and also stated that he was given employment on the basis of certificate (of competency) Ex. W-1 issued by Delhi Municipal Corporation and was told that he would be made regular in two months but instead the Management removed him from service on 29th March, 1990 without paying him monetary benefits and his wages for the month of March, 1990. The workman also stated that at the time of his initial appointment he was not told to get his name registered with the employment exchange or to produce I.T.I. Diploma. He stated further that during his eight years service I.T.I. Diploma was never demanded from him. The workman admitted his signatures on Ex. M-4, M-5, & M-6 which are applications which he had given on 22nd November, 1983, 3rd January, 1983 and 24th March, 1983 respectively for seeking employment in B.K. Hospital. The workman also admitted that he is middle pass and never got his name registered with the Employment Exchange. The workman also stated that since he was unemployed he be reinstated with continuity of service and full back wages.

8. Dr. S. Kumar Chief Medical Officer (Retd.) examined as WW-2 stated that he had remained posted in B. K. Hospital from 1983 to 1990. The workman was recruited as Electrician in B. K. Hospital in January, 1983 on daily wages at D. C. Rates. His work was satisfactory and he had never given a cause of any complaint. He was unable to tell as to whether the Director Health Services had imposed ban in the year, 1983 on regular recruitment. Aslam Khan, Assistant Unit Officer, B. K. Hospital examined as WW-3 and placed on record Ex. WW-3/A containing complete data of service put in by the workman including breaks wherever the same had occurred. According to him, the workman was employed in the year 1983 on daily wages at D.C. Rates. The perusal of Ex. WW-3/A shows that the service of the workman was continuous from 3rd January, 1983 to 8th February, 1990 with break of one day each on two of his stints of employment commencing on 4th April, 1983 and 4th July, 1983. Such a break of two days is quite notional and does not at all break the continuity of service of the workman. So, from the oral and documentary evidence which has come on record, it stands proved beyond doubt that the workman had served the Management for a continuous period of seven years as claimed by him.

9. There is no denying the fact that the workman, is neither Matriculate nor is in possession of I.T.I. Diploma. It is also correct that he had never got his name registered with the employment exchange but one fact which stands out glaringly is that at the time of initial recruitment of the workman, certificate of competency as Class-II Electrician issued by Municipal Corporation of Delhi was given due recognition and that is the reason that he was inducted into service. It has also come in evidence that apart from the fact that his performance was found to be satisfactory he was never asked, during the midst of his service, to produce I.T.I. Diploma. If he was not qualified, he should have been asked to prove his eligibility in the very first year of his appointment. The Management slept over the matter for more than six years and continued allowing him extension in service without break. An abrupt change in its stand is not understandable. By putting service for seven years without there being any complaint against him, he entitled him to acquire a legal status and his services could not have been terminated except after following procedure laid down in Industrial Disputes Act. So, when the termination of the services of the workman had been ordered without following the procedure, the same is void, illegal and against the provisions of the above said Act. Accordingly, therefore, the order of the Management to terminate the services of the workman with effect from 29th March, 1990 is held to be illegal and unjustified. He is thus entitled to be reinstated and it is so ordered. The workman who was holding the post of the Electrician on daily wages at D.C. Rates throughout cannot be allowed back wages on the maximum of 'No work no wages' but would be entitled continuity of service in the matter of calculating his service for the purposes of wages to be paid under the prevailing policy of the State Government whereunder even daily wage earners are entitled to be made regular after putting in service for specific number of years. On that reckoning, the case of regularising the services of the workman should also be considered to his advantage.

Issues No. 2 and 3:

10. The onus of proof of both these issues was placed on the Management. These issues were neither pressed nor any evidence led the reon. As such, both the issues are decided against the Management and in favour of the workman.

11. In view of my findings on Issue No. 1, the workman is held entitled to reinstatement with continuity of service but without back wages.

The 23rd January, 1995.

N. L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 306, dated the 24th January, 1995.

▲ copy, with three copare copies, is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

The 10th February 1995

No. 14/13/87-6Lab./227.—In pursuance of the provisions of clause 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s (1) Chief Administrator, Haryana Urban Development Authority, Manimajra, U.T., Chandigarh *versus* Sant Lal.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 372 of 89

between

SANT LAL S/O SHRI NAND LAL C/O SHRI SHARDHA NAND, GENERAL SECRETARY,
AITUC OFFICE, 214/4 MARLA GURGAON *... Workman*

and

THE MANAGEMENT OF (1) M.R. CHIEF ADMINISTRATOR, HARYANA URBAN DEVELOPMENT AUTHORITY, MANIMAJRA, U.T., CHANDIGARH

(2) ADMINISTRATIVE OFFICER, HARYANA URBAN DEVELOPMENT AUTHORITY,
SECTOR-14, GURGAON *... Managements.*

Present :

Shri Sharda Nand Authorised Representative, for the workman.

Shri R. S. Sathi ADA of the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana, refers the following dispute, between the parties, mentioned above, to this Court, for adjudication,—*vide* Haryana Government Gazette, Notification No. 47872—78, dated 19th October, 1989 :—

Whether the termination of services of Sant Lal is just and legal? If not, to what relief is he entitled?

2. According to the claim statement, the workman was working as a Clerk with the management since 3rd October, 1987 and his services were illegally terminated on 30th November, 1988. He was drawing a salary of Rs. 1,195 p.m. The workman had sought his reinstatement with full back wages, since the management did not comply with the mandatory provisions of Section 25-F of the Industrial Disputes Act.

3. The management took up the plea in their written statement that the workman was appointed as Clerk on purely *ad hoc* basis for 89 days only and he had joined his duties on 5th August, 1988 and his services were terminated on 31st October, 1988. It was also pleaded that the petitioner had no *locus-standi* to make a reference and the petitioner was not a workman and the management was not an industry.

4. On the pleadings of the parties, following issues were framed on 14th September, 1990 :—

- (1) Whether the termination of services of Sant Lal is just and legal ? If not, to what relief is he entitled ?
- (2) Whether the petitioner has no *locus-standi* to file the present petition ?
- (3) Whether the respondent does not fall within the definition of "Industry" ?
- (4) Whether the applicant is not a workman ?

5. I have heard authorised representatives of the parties and have gone through the material placed on record. My findings on the issues are as under :—

Issues No. 2, 3, &4:

6. These issues were not pressed before me, therefore, they shall be taken up as not pressed.

Issue No. 1:

7. The management had examined S. B. Singh, MW-1 who deposed that the workman had worked from 5th August, 1988 to 31st October, 1988 for 89 days and for this period wages had been paid and since sanction was not received from the competent authority, extension had not been given to him. He also stated that after his termination, they had not engaged any other clerk in the office. Kanwal Krishan, MW-2 made a similar statement as that made by MW-1. In the cross-examination, he admitted that letters Ex. W-1 to Ex. W-3 had been issued by the Chief Administrator, HUDA.

8. After the close of the case by the management, case was fixed for the evidence of the workman, but despite several opportunities, the workman did not appear and his evidence was closed by Court order.

9. The management in the present case, have taken up a stand that the workman had put in 89 days of service and his services stood terminated on the expiry of the contractual period and his case falls under clause (bb) in Section 2(00) of the Industrial Disputes Act. The workman did not appear in the witness box in support of his plea and an argument raised on his behalf was that the management had employed the workman for a period of 89 days and they had followed unfair labour practice and the breaks had been given in between so as to disrupt the continuity of service. Admittedly no compensation had been paid. Letter Ex. W-1 shows that the workman was appointed as clerk for 89 days, *Vide* letter dated 30th September, 1987, *Vide* letter Ex. W-2, the workman was again appointed as clerk on *ad hoc* basis for 89 days. After giving him a gap of few days, another appointment letter Ex. W-3 was given again for 89 days. There is no denying the fact that the workman was appointed for each time for a period of 89 days and during the calendar year, he had worked for 267 days. It appears that this course was adopted, so as to disrupt the continuity of service. There is no evidence on the file to show that the work of the workman was not to the satisfaction of his superiors. There is no evidence that services were no more required or that the work assigned to him had been completed. It is not a case where the whole department had been closed on account of a particular assignment, for which, it had been established. In the light of the above, it can safely be said that while relying upon, Chief Administrator HUDA, Manimajra *versus* Industrial Tribunal, Rohtak, 1995 LLR page 455 that the action of the management was *mala fide* and was solely intended to deprive the workman of his valuable right to remain in employment unless his services were terminated according to law. Compliance of Section 25F had not been made in this case therefore, termination of the workman is illegal and the workman is entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly with the order as to costs.

ANITA CHAUDHARY,

The 6th January, 1995.

Presiding Officer,
Industrial Tribunal-Cum-Labour Court,
Gurgaon.

Endorsement No. 103, dated the 31st January, 1995

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-Cum-Labour Court,
Gurgaon.